

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0633, Nelson Mauricio Lopez & a. v. Nationwide Mutual Insurance Company, the court on September 10, 2007, issued the following order:

The respondent, Nationwide Mutual Insurance Company, appeals the trial court's order granting the declaratory judgment petition filed by the petitioners, Nelson Mauricio Lopez and Wilbert David Lopez. We affirm.

This is the second time that this case is before the court. In the first appeal, the respondent argued that the trial court had erred when it ruled that neither Exclusion 5(a) nor Exclusion 6 in the applicable policy applied to the petitioners' claims for coverage. Exclusion 5(a) excludes coverage for bodily injury to "any person eligible to receive any benefits required to be provided or voluntarily provided by any **insured** under . . . workers' compensation . . . or any similar law." Exclusion 6 precludes coverage for bodily injury to "an employee of an **insured** while engaged in employment." Exclusion 6 provides, however, that there is coverage for an employee "at **your** home who is not, or is not required to be, covered by any workers' compensation law."

The trial court had ruled that neither exclusion applied because the petitioners were not employees of the insured, Paul G. Rivard. In making this determination, however, the trial court failed to consider applicable provisions of the New Hampshire Workers' Compensation Law. Instead, the court applied the totality of the circumstances test set forth in the Restatement (Second) of Agency § 220, at 485-86 (1958). Applying this test, the court concluded that "there was not an employer-employee relationship between Rivard and the petitioners."

In the respondent's prior appeal, we ruled that applying the totality of the circumstances test instead of the Workers' Compensation Law was legal error. We therefore reversed the trial court's order and required the court, on remand, to reanalyze whether the petitioners were employees using the pertinent provisions of the Workers' Compensation Law, instead of the totality of the circumstances test.

On remand, the trial court ruled that while the petitioners were "employees," as opposed to independent contractors, they were not employed by Rivard personally, but by his company, and therefore the exclusions did not apply.

In this appeal, the respondent first argues that the trial court erred because it exceeded the scope of our remand order. In carrying out a mandate on remand, the trial court “is limited to the specific direction of the mandate as interpreted in the light of the opinion.” Williams v. Babcock, 121 N.H. 185, 194 (1981). “It follows that the trial court cannot adjudicate a right not within the scope of the remand even though it may be one that the appellate court might have directed.” Id.

Our remand order directed the trial court to apply the Workers’ Compensation Law to determine whether the petitioners were employees or independent contractors. The trial court complied with this directive and concluded that the petitioners were employees. Nothing in our remand order precluded the trial court from then analyzing whether, even though the petitioners were employees, the exclusions applied to them. The trial court did not reach this issue in its first decision because it had concluded that the petitioners were independent contractors. It was necessary for the court to reach this issue on remand because it concluded that the petitioners were employees. Pursuant to their plain language, the exclusions apply only to persons who are employed by the insured. We conclude, therefore, that the trial court did not exceed the scope of our remand order.

The respondent next asserts that the trial court erred by considering new evidence submitted by the petitioners. The record on appeal does not support this assertion. The trial court expressly denied the petitioners’ motion to introduce new evidence. The trial court’s determination that the petitioners were employed by Rivard’s company was based upon a factual finding the trial court made in its first decision, which the respondent neither challenged nor appealed.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**